

MARK P. ROBINSON, JR., SBN 054426  
KEVIN F. CALCAGNIE, SBN 108994  
DANIEL S. ROBINSON, SBN 244245  
**ROBINSON CALCAGNIE ROBINSON  
SHAPIRO DAVIS, INC.**

19 Corporate Plaza Dr.  
Newport Beach, California 92660  
Telephone: (949) 720-1288  
Facsimile: (949) 720-1292  
mrobinson@rcrsd.com  
kcalcagnie@rcrsd.com  
drobinson@rcrsd.com

WAYNE R. GROSS, SBN 138828  
*WGross@GGTrialLaw.com*

MICHAEL I. KATZ, SBN 181728  
*MKatz@GGTrialLaw.com*

**GREENBERG GROSS LLP**  
650 Town Center Drive, Suite 650.  
Costa Mesa, California 92626  
Telephone: (949) 380 2800  
Facsimile: (949) 383-2801

*Attorneys for Plaintiff and the Proposed Classes*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DANIEL HALE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

DRAFTKINGS, INC., a Delaware  
Corporation, and FANDUEL, INC., a  
Delaware Corporation,

Defendants.

Case No. 8:15-CV-1879

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff DANIEL HALE, by and through his attorneys Robinson Calganie Robinson  
2 Shapiro Davis, Inc. and Greenberg Gross LLP, individually and on behalf of all  
3 others similarly situated, alleges the following:

4 **NATURE OF THE ACTION**

5 1. Americans love sports, and the National Football League (“NFL”) is the  
6 most popular sport in the United States. One of the ways fans follow the NFL is by  
7 playing fantasy football. Fans “draft” players for certain positions from across all  
8 the teams in the league, and they compete against other fans to see who can pick the  
9 best teams. Most fantasy games are played amongst friends purely for recreation.

10 2. Taking advantage of the popularity of fantasy football, DraftKings, Inc.  
11 (“DraftKings”) and FanDuel, Inc. (“FanDuel”) offer on-line gambling websites  
12 where consumers place bets each week, and winnings are distributed based on how  
13 well each player’s team performs.

14 3. Defendants trick consumers into believing that playing on their websites  
15 is not gambling because winners are determined by skill not luck. But in fact,  
16 Defendants operate an illegal and deceptive gambling enterprise that crosses all state  
17 lines. What consumers do not know is that the game is rigged: DraftKings and  
18 FanDuel allowed their personnel — many with information not available to  
19 customers — to play on each other’s sites and win large amounts of money to the  
20 direct detriment of their customers.

21 4. This action seeks to redress the deceptive and collusive practices  
22 committed by Defendants in connection with their on-line fantasy gambling  
23 enterprise, and to obtain full remuneration for every dollar lost by players on either  
24 site. Plaintiff brings this action seeking injunctive relief and damages on behalf of  
25 himself and the hundreds of thousands or millions of consumers who have been  
26 victimized by Defendants’ misleading and deceptive conduct.



1 into points, based on a point system, which are then totaled according to a roster  
2 selected by each fantasy team's manager. Fantasy team owners draft, cut and trade  
3 players, just like in real sports.

4 12. Defendants are fantasy sports contest providers. They operate websites  
5 that enable participants to play one-day or one-week fantasy sports contests against  
6 other participants on the same website and earn money based on individual player  
7 performances in major American sports leagues, such as Major League Baseball, the  
8 National Hockey League, the National Football League, and the National Basketball  
9 Association.

10 13. Defendants claim their contests are games of skill and, therefore, not  
11 subject to gambling industry regulations. They spend millions of dollars on  
12 marketing to convey and reinforce this message. For example, in a TV commercial,  
13 FanDuel invites viewers to "get paid for [your] knowledge" if you are "smarter than  
14 the average fan."<sup>1</sup> DraftKings also ran TV ads with the same message, exhorting  
15 viewers to "use your knowledge and showcase your skills"<sup>2</sup> and stating "there's a  
16 game within a game that requires a different set of skills . . . we don't just play, we  
17 are players, we train and we win."<sup>3</sup> DraftKings' terms and conditions has a section  
18 titled "Contest of Skill" which claims that "[c]ontests offered on the website are  
19 contests of skill."<sup>4</sup> FanDuel's terms and conditions likewise represents that  
20 "FanDuel is a game of skill."<sup>5</sup>

21 14. As a result of representations made in their advertising blitz and terms  
22 and conditions, Defendants added millions of new users, including Plaintiff.  
23

24  
25 <sup>1</sup> <http://www.ispot.tv/ad/AVPC/fanduel-com-one-week-fantasy-football-get-paid-for-knowledge> (last visited on November 12, 2015).

26 <sup>2</sup> <https://youtu.be/VDa-cDu8KYg> (last visited on November 12, 2015).

27 <sup>3</sup> <https://youtu.be/bfCm6PJUL5I> (last visited on November 12, 2015).

28 <sup>4</sup> <https://www.draftkings.com/help/terms> (last visited November 12, 2015).

<sup>5</sup> <https://www.fanduel.com/terms> (last visited November 12, 2015).

1 Plaintiff paid to play fantasy sports on DraftKings' website during the 2015 NFL  
2 season.

3 15. To play Defendants' daily fantasy sports contests, a player must create  
4 an account, deposit money in it, and use the money to pay entry fees for each game.  
5 Winners of each fantasy sports contest receive money credited to their accounts. The  
6 entry fees range from less than a dollar to thousands of dollars,<sup>6</sup> and the prize pools  
7 can pay millions.

8 16. The odds of winning vary depending on the pool size, which typically  
9 could have dozens or even hundreds of participants. Typically winnings go to only a  
10 small percentage of players. Sports Business Daily analyzed publicly available data  
11 and found that, for the first half of the 2015 Major League Baseball season, 91% of  
12 profits were won by just 1.3% of players.<sup>7</sup> Bloomberg concurred and offered this  
13 "simple truth": "over time nearly all of the prize money flows to a tiny elite equipped  
14 with elaborate statistical modeling and automated tools that can manage hundreds of  
15 entries at once and identify the weakest opponents."<sup>8</sup>

16 17. At all relevant times, Defendants did not prohibit their employees from  
17 playing fantasy sports on competing websites. In fact, Paul Liberman, DraftKings  
18 co-founder, admitted in his speech at Babson College on September 25, 2015 that  
19 DraftKings employees made "significantly more money off of our competitors' sites  
20 than they do working for DraftKings."<sup>9</sup> Defendants concealed this practice from the  
21 public and continued to aggressively tout that fantasy sports on their websites were  
22

23  
24 <sup>6</sup> <http://www.dailyfantasysports101.com/draftkings-nfl-5-million-opening-week/> (last visited  
November 12, 2015)

25 <sup>7</sup> <http://www.sportsbusinessdaily.com/Journal/Issues/2015/07/27/Opinion/From-the-Field-of-Fantasy-Sports.aspx> (last visited on November 12, 2015).

26 <sup>8</sup> <http://www.bloomberg.com/news/articles/2015-09-10/you-aren-t-good-enough-to-win-money-playing-daily-fantasy-football> (last visited on November 12, 2015).

27 <sup>9</sup> <https://www.bostonglobe.com/business/2015/10/05/draftkings-bans-employees-from-competitors-sites/s36ig5e0eV0OR9C55R8hwL/story.html> (last visited on November 12, 2015).  
28

1 fair, lucrative and based on skill and knowledge. By doing so, they skewed the odds  
2 of winning against contestants not employed by fantasy sports contest operators.

3 18. Defendants' employees have a distinct advantage over other contestants  
4 employed by fantasy sports contest operators: they have unfettered real time access  
5 to material inside information, including but not limited to cumulative statistical data  
6 on how rosters have fared and will likely fare if entered in rival sites, overall  
7 ownership percentages of players, data on particular players, identifying low-owned  
8 or undervalued players, and analytics related to particular strategies that could  
9 increase a player's chances of winning. DraftKings CEO Jason Robins admitted in  
10 an interview with ESPN that "[i]nformation like that would give people an advantage  
11 . . . if it's information that others don't have and it pertains to the game."<sup>10</sup> He  
12 further admitted that "[d]ata that could give players an advantage is only allowed to  
13 be accessed by certain types of employees, such as customer service or engineering  
14 workers."<sup>11</sup>

15 19. As such, it comes as no surprise that DraftKings employees have won  
16 over \$ 6 million in FanDuel's fantasy sports games.<sup>12</sup> In June 2015, a FanDuel  
17 employee won DraftKings' King of Boston contest for \$50,000.<sup>13</sup> More recently, a  
18 DraftKings employee beat 229,833 contestants on FanDuel to win \$350,000.<sup>14</sup> As  
19 Defendants admitted, their employees have exclusive access to material data, *i.e.*,  
20  
21

22 <sup>10</sup> <http://espn.go.com/espn/print?id=13924648&type=HeadlineNews&imagesPrint=off> (last  
23 visited on November 12, 2015).

24 <sup>11</sup> <http://www.betaboston.com/news/2015/10/07/draftkings-ceo-had-reservations-about-employees-playing-fantasy-sports-but-didnt-expect-uproar/> (last visited on November 12, 2015).

25 <sup>12</sup> <http://www.businessinsider.com/draftkings-daily-fantasy-sports-fanduel-2015-10> (last visited on November 12, 2015).

26 <sup>13</sup> [http://www.nytimes.com/2015/10/12/sports/fantasy-sports-draftkings-fanduel-insiders-edge-football.html?\\_r=0](http://www.nytimes.com/2015/10/12/sports/fantasy-sports-draftkings-fanduel-insiders-edge-football.html?_r=0) (last visited November 12, 2015).

27 <sup>14</sup> <http://larrybrownsports.com/fantasy/ethan-haskell-draft-kings-fanduel-profile/276741> (last  
28 visited November 12, 2015).

1 ownership percentages of players.<sup>15</sup> But Defendants were quick to attribute the  
2 employee's winning to "coincidence."<sup>16</sup>

3 20. Contrary to Defendants' representations, they are engaged in an illegal  
4 and deceptive gambling enterprise. In fact, on October 15, 2015, the Nevada  
5 Gaming Board determined that Defendants were engaged in unlicensed gambling  
6 and suspended their operations. The Board determined that the sites operate  
7 gambling enterprises, and that they constitute sports pools, which are patently illegal  
8 gambling operations.

9 21. On October 6, 2015, the New York Attorney General began to  
10 investigate whether Defendants' employees' winnings were based on inside  
11 information. Until then, Plaintiff did not know that Defendants' employees were  
12 allowed to play fantasy sports on competing websites. On October 15, 2015, the  
13 Federal Bureau of Investigation announced a criminal investigation of Defendants  
14 arising from the misconduct alleged in this Complaint. Not surprisingly, a federal  
15 grand jury is being convened by the U.S. Attorney's office in Tampa, Florida whose  
16 reported purpose is to consider whether Daily Fantasy Sports operators are in  
17 violation of Florida and federal anti-gambling laws.

18 22. Only after its deceptive practices were made public, DraftKings began  
19 advising its customers that it has enacted policies "permanently prohibit[ing]  
20 [DraftKings employees] from participation in any public daily fantasy sports contests  
21 for money," as well as policies prohibiting "employees from any other Daily Fantasy  
22 Sports contest operator from participating in games on DraftKings."<sup>17</sup> After its  
23 deceptive practices were made public, FanDuel made a similar announcement on its

24 <sup>15</sup> <https://rotogrinders.com/threads/draftkings-ownership-leak-850584?page=1#reply-850635>  
25 (last visited on November 12, 2015). Ownership percentages of players help in the selection of  
undervalued low-owned players.

26 <sup>16</sup> <http://www.betaboston.com/news/2015/10/07/draftkings-ceo-had-reservations-about-employees-playing-fantasy-sports-but-didnt-expect-uproar/> (last visited on November 12, 2015).

27 <sup>17</sup> <http://playbook.draftkings.com/press/draftkings-statement-1072015/> (last visited November  
28 12, 2015).



1 website: “We have permanently banned our employees from playing any daily  
2 fantasy games for money, on any site. We will also require all customers to confirm  
3 that they are not an employee of any other third party fantasy site, and if they are,  
4 they will not be allowed to access our site.”<sup>18</sup>

5 23. Robins has admitted having had “some reservations” about DraftKings  
6 employees participating in fantasy sport contests on competing websites, stating “I,  
7 to be honest, did have some reservations about this, and have spoken in the past with  
8 some of our competition about whether we should have policies such as this one in  
9 place.”<sup>19</sup> But, despite these reservations, Defendants did nothing to stop the practice.  
10 When asked in an interview why Defendants did not ban their employees from  
11 playing fantasy sports on competing websites, Robins explained: “[c]ertainly we may  
12 have been late to the game on the employee ban—and hindsight 20/20, that’s  
13 something I admit we should have done before.”<sup>20</sup>

14 24. Had Plaintiff and the proposed class (defined below) known that  
15 Defendants’ employees with access to material non-public information would  
16 participate in fantasy sports contests, they would not have paid to play fantasy sports  
17 on Defendants’ websites.

18 25. Plaintiff and the proposed class were injured by Defendants’ course of  
19 deceptive, misleading, and negligent conduct in allowing their employees with  
20 material inside information to play fantasy sports on competing websites, concealing  
21 such practice from the public and marketing their contests as being fair, lucrative,  
22 and based purely on skill and knowledge.

23  
24  
25 <sup>18</sup> <https://newsroom.fanduel.com/2015/10/07/statement-to-the-press/> (last visited November 12, 2015).

26 <sup>19</sup> <http://www.betaboston.com/news/2015/10/07/draftkings-ceo-had-reservations-about-employees-playing-fantasy-sports-but-didnt-expect-uproar/> (last visited on November 12, 2015).

27 <sup>20</sup> <http://fortune.com/2015/10/08/draftkings-ceo-discusses-scandal/> (last visited November 12, 2015).  
28





1 geographically dispersed throughout the United States. Therefore, the proposed  
2 Class is so numerous that joinder of all members is impracticable.

3 32. All members of the Class have been subject to and affected by the same  
4 practices and policies described herein. There are questions of law and fact that are  
5 common to the Class and which predominate over any questions affecting only  
6 individual members of the Class. These questions include, but are not limited to the  
7 following:

- 8 a. Whether Defendants operate an illegal deceptive gambling  
9 enterprise;
- 10 b. Whether Defendants made the representations set forth above and  
11 substantially similar representations to Plaintiff and members of  
12 the proposed class;
- 13 c. Whether Defendants' advertisements were false, misleading or  
14 unfair;
- 15 d. Whether Defendants owed duties to Plaintiff and the proposed  
16 class, the scope of those duties and if they breached those duties;
- 17 e. Whether Defendants fraudulently induced Plaintiff and the  
18 proposed class into using their website under false pretenses,  
19 through material misrepresentations or material omissions;
- 20 f. Whether consumers were harmed by Defendants' actions as  
21 described above;
- 22 g. The extent of the damages caused by Defendants' acts;
- 23 h. Whether Defendants' employees used non-public data and/or  
24 information to gain an advantage at daily fantasy sports sites,  
25 whether Defendants acted in concert to condone, allow or  
26 promote this practice, or whether Defendants were negligent in  
27 allowing employees to access and use confidential data, or were  
28 negligent or committed fraud in failing to disclose to Plaintiff and  
the proposed class that these practices were occurring;
- i. Whether Defendants engaged in deceptive and/or misleading  
activity with the intent to defraud Plaintiff and members of the

1 Class;

2 j. Whether Defendants are liable to Plaintiff and members of the  
3 Class for damages for conduct actionable under RICO;

4 k. Whether Defendants are is liable to Plaintiff and members of the  
5 Class for damages for conduct actionable under various state  
6 Consumer Protection Statutes;

7 l. Whether Defendants unjustly enriched themselves by its acts and  
8 omissions, at the expense of Plaintiff and members of the Class;  
and

9 m. The extent of the damages caused by Defendants' acts.

10 33. The claims of the named Plaintiff is typical of the claims of the Class  
11 and do not conflict with the interests of any other members of the Class in that  
12 Plaintiff and the other members of the Class were subject to the same wrongful  
13 policies and practices by Defendants.

14 34. The named Plaintiff will fairly and adequately represent the interests of  
15 the proposed Class. He is committed to the vigorous prosecution of the Class'  
16 claims and has retained attorneys who are qualified to pursue this litigation and have  
17 experience in class actions.

18 35. The prosecution of separate actions by individual members of the Class  
19 would create a risk of adjudications with respect to individual members of the Class  
20 which would, as a practical matter, be dispositive of the interests of other members  
21 of the Class who are not parties to the action, or could substantially impair or impede  
22 their ability to protect their interests.

23 36. The prosecution of separate actions by individual members of the Class  
24 would create a risk of inconsistent or varying adjudications with respect to individual  
25 members of the Class which would establish incompatible standards of conduct for  
26 the parties opposing the Class. Such incompatible standards and inconsistent or  
27 varying adjudications, on what would necessarily be the same essential facts, proof  
28

1 and legal theories, would also create and allow to exist inconsistent and incompatible  
2 rights within the Plaintiff Class.

3 37. Defendants have acted or refused to act on grounds generally applicable  
4 to the Class making injunctive relief appropriate.

5 38. The questions of law and fact common to members of the Class  
6 predominate over any questions affecting only individual members.

7 39. Notice to the proposed Class can be achieved through electronic mail  
8 and/or U.S. mail to the addresses of the Class members that are kept within  
9 Defendants' records. Notice can also be supplemented via publication.

10 40. A class action is superior to other available methods for the fair and  
11 efficient adjudication of the controversies herein in that:

- 12 a. Individual claims by the Class members are impractical as the  
13 costs of pursuit far exceed what any one individual Plaintiff has at  
14 stake;
- 15 b. As a result, individual members of the Class have no interest in  
16 prosecuting and controlling separate actions;
- 17 c. It is desirable to concentrate litigation of the claims herein in this  
18 forum;
- 19 d. The proposed Class action is manageable.

20 41. Plaintiff is not aware of any difficulty which will be encountered in the  
21 management of this litigation which should preclude its maintenance as a class  
22 action.

23 //

24 //

25 //

26 //

27 //

28 //

**FIRST CAUSE OF ACTION**

**Violations Of The Racketeer Influenced And Corrupt Organizations Act  
(18 U.S.C. §1962(c))**

42. Plaintiff restates and incorporate herein by reference the preceding paragraphs as if fully set forth herein.

43. Defendants and their personnel are “persons” within the meaning of 18 U.S.C. §1961(3) who conducted the affairs of the enterprise through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c).

44. DraftKings and its personnel associated with or combined with FanDuel and its personnel for the common purpose of engaging in a course of racketeering conduct, specifically, the creation and operation of a nationwide deceptive gambling enterprise. This association in fact enabled Defendants to deceptively market and operate in concert their websites and to profit at the direct detriment of their customers.

45. Defendants and their personnel received substantial revenue from their scheme, and these revenues were far greater than they would have been had the deceptive acts not been undertaken. As distinct entities, both of the Defendants and their personnel profited from the exercise of the enterprise.

46. The behavior of the Defendants, as distinct entities acting in concert, constituted an ongoing pattern of activity that affected interstate commerce, because, *inter alia*, the deceptive activities described herein led to the marketing and sale of daily fantasy sports contests to millions of individuals throughout the United States.

47. Defendants conducted and participated in the affairs of their deceptive marketing enterprise through patterns of racketeering activity that included acts indictable under 18 U.S.C. § 1341 (mail fraud), § 1343 (wire fraud), and § 1952 (use of interstate facilities to conduct unlawful activity).

1           48. Defendants' use of the mails and wires to perpetrate their fraud involved  
2 thousands of communications, including but not limited to:

- 3           a. communications with and among enterprise participants that led to the  
4 suppression and failure to timely disclose negative information that  
5 called into question the fair play of their contests;
- 6           b. communications with and among the enterprise participants that  
7 fraudulently misrepresented the fair play of their contests amongst  
8 themselves and others;
- 9           c. communications with individuals, including Plaintiff, inducing  
10 payments for daily fantasy sports contests by misrepresenting the fair  
11 play of their contests;
- 12           d. receiving the proceeds in the course of and resulting from Defendants'  
13 improper scheme;
- 14           e. transmittal and receipt of monies from players;
- 15           f. communications with and among the enterprise participants to conceal  
16 the fraud occurring by virtue of failing to disclose the results of negative  
17 reports;
- 18           g. communications with and among the enterprise participants to develop  
19 and implement the promotional strategy;
- 20           h. communications with and among the enterprise participants to develop  
21 and implement the publications strategy; and
- 22           i. transmittal and receipt of payments in exchange for, directly or  
23 indirectly, activities in furtherance of the deceptive marketing scheme.

24           49. Defendants also conducted and participated in the affairs of their  
25 deceptive marketing enterprise through patterns of racketeering activity that included  
26 an act involving gambling chargeable under California law and punishable by  
27 imprisonment for more than one year and which is indictable under 18 U.S.C. §§  
28

1 1084 (relating to the transmission of gambling information), 1953 (relating to  
2 interstate transportation of wagering paraphernalia), and 1955 (relating to the  
3 prohibition of illegal gambling businesses).

4 50. Defendants knew that without their deceptive scheme (hiding the fact  
5 that the game is rigged in favor of Defendants' personnel), consumers would not  
6 have paid to play daily fantasy sports on their websites. At all times during the  
7 deceptive scheme, Defendants and the enterprise participants had a legal and ethical  
8 obligation of candor and honest dealing with consumers.

9 51. The conduct of the Defendants' marketing scheme described above  
10 constituted "racketeering activity" within the meaning of 18 U.S.C. § 1961(1).  
11 Defendants' decisions and activities in connection with the daily fantasy sports  
12 marketing scheme to routinely conduct their transactions in such a manner constitute  
13 a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5).

14 52. The above-described racketeering activities amounted to a common  
15 course of conduct intended to deceive and harm the public, Plaintiff, and members of  
16 the Class. Each such racketeering activity was related, had similar purposes,  
17 involved similar or the same participants, had similar methods of commission, and  
18 had similar results affecting the same or similar victims, including Plaintiff and  
19 members of the Class.

20 53. Plaintiff and members of the Class have been injured in their property  
21 by reason of these violations in that Plaintiff and members of the Class paid millions  
22 of dollars to play daily fantasy sports that they would not have paid had Defendants  
23 not engaged in this pattern of racketeering activity.

24 54. The injuries to Plaintiff and members of the Class were directly and  
25 proximately caused by Defendants' racketeering activity.  
26  
27  
28





1 including material misrepresentations and omissions designed to defraud Plaintiff  
2 and members of the Class.

3 61. The nature of the above-described acts by Defendants and their co-  
4 conspirators' in furtherance of the conspiracy gives rise to an inference that they not  
5 only agreed to the objective of an 18 U.S.C. § 1962(d) violation of RICO by  
6 conspiring to violate 18 U.S.C. § 1962(c), but also were aware that their ongoing  
7 fraudulent and extortionate acts have been and are part of an overall pattern of  
8 racketeering activity.

9 62. As a direct and proximate result of Defendants' overt acts and predicate  
10 acts in furtherance of violating 18 U.S.C. § 1962(d) by conspiring to violate 18  
11 U.S.C. § 1962(c), Plaintiff and members of the Class have been and continue to be  
12 injured in their business or property as set forth more fully above.

13 63. Defendants sought to and have engaged in the commission of and  
14 continue to commit overt acts, including the following unlawful racketeering  
15 predicate acts:

- 16 a. Multiple instances of mail and wire fraud violations of 18 U.S.C. §§  
17 1341 and 1342;
- 18 b. Multiple instances of mail fraud violation of 18 U.S.C. §§ 1341 and  
19 1346;
- 20 c. Multiple instances of wire fraud violations of 18 U.S.C. §§ 1341 and  
21 1346;
- 22 d. Multiple instances of unlawful activity in violation of 18 U.S.C. § 1952.  
23
- 24 e. Operating an unlawful and deceptive gambling enterprise in violation of  
25 state and federal law.

26 64. Defendants' violations of the above federal laws and the effects thereof  
27 are ongoing and will continue. Plaintiff and members of the Class have been injured  
28 in their property by reason of these violations in that Plaintiff and members of the

1 Class have paid hundreds of millions of dollars to play daily fantasy sports that they  
2 would not have paid had Defendants not conspired to violate 18 U.S.C. § 1962(c).

3 65. Injuries suffered by Plaintiff and members of the Class were directly  
4 and proximately caused by Defendants' racketeering activity as described above.

5 66. Individuals, including Plaintiff and members of the Class, directly relied  
6 on the representations constituting the racketeering activities of the Defendants.  
7 Plaintiff and members of the Class, both directly and indirectly, relied on  
8 Defendants' promotions and representations regarding the fair play of their contests.  
9 Because Defendants controlled all knowledge upon which the claims of their  
10 contests' fair play were based, Plaintiff and members of the Class, as well as others  
11 in the public were obligated to rely on Defendants' representations. Further,  
12 Defendants perpetuated this reliance by taking the steps itemized above to suppress  
13 the dissemination of critical information regarding the unfair operation of their  
14 contests.

15 67. By virtue of these violations of 18 U.S.C. § 1962(d), Defendants are  
16 liable to Plaintiff and the Class for three times the damages Plaintiff and members of  
17 the Class have sustained, plus the cost of this suit, including reasonable attorney's  
18 fees.

19 68. By reason of the foregoing, and as a direct and proximate result of  
20 Defendants' fraudulent misrepresentations, Plaintiff and members of the Class have  
21 suffered damages. Plaintiff and members of the Class are therefore entitled to  
22 compensatory damages, equitable relief, punitive damages, costs and reasonable  
23 attorneys' fees.

24 //

25 //

26 //

27 //

**THIRD CAUSE OF ACTION**

**Violations of the Unfair Competition Law (“UCL”)  
California Business & Professions Code §17200 *et seq.*  
(California Subclass Only)**

69. Plaintiff restates and incorporate herein by reference the preceding paragraphs as if fully set forth herein.

70. Plaintiff and the members of the proposed California Subclass are consumers who paid to play on Defendants’ websites in California.

71. California Business & Professions Code §17200 *et seq.* (“UCL”) prohibits acts of unfair competition, including any “unlawful, unfair, or fraudulent business act or practice,” including but not limited to false advertising.

72. Defendants are, each of them , businesses doing business within the State of California. More specifically, Defendants’ gambling sites are used by tens of thousands of California residents, including Plaintiff and members of the proposed California Subclass, who believed these sites to be fair contests of skill.

73. Defendants’ conduct in carrying out their business violated the UCL because Defendants made representations and omissions, as detailed above, which are false, deceptive, or misleading. In particular, because Defendants’ conduct has been directed to California consumers, and thousands of California consumer have used and lost money through Defendants’ operations. Thus, the UCL can be fairly applied to a class of consumers within California who have been harmed as a result. Moreover, California has a substantial interest in preventing fraudulent practices within the state which may have an effect both in California and throughout the rest of the country.

74. Specifically, Plaintiff and the proposed California Subclass Members have been injured by the false and misleading statements of Defendants. Plaintiff

1 and the proposed California Subclass Members paid a premium price to play on a  
 2 fantasy website they reasonably believed to be fair; had Defendants disclosed that  
 3 their games are rigged, they would not be able to command the price premium they  
 4 charge. Additionally, Plaintiff and the proposed California Subclass Members have  
 5 lost money as a result of Defendants' unfair policies that allowed Defendants'  
 6 employees to unfairly compete on the Defendants' sites. Plaintiff and all members of  
 7 the proposed California Subclass are entitled to relief, including full restitution  
 8 and/or disgorgement of all revenues, earnings, profits, compensation, and benefits  
 9 that may have been obtained by Defendants as a result of their unfair business  
 10 practices. Plaintiff and all members of the proposed California Subclass are also  
 11 entitled to consequential damages including such taxes and fees that may have been  
 12 paid in connection with the use of Defendants' websites.

13 75. Plaintiff and the other members of the Class further seek to enjoin the  
 14 unfair and deceptive practices described above. Absent injunctive relief, Defendants  
 15 will continue to cheat customers on their gaming websites.

#### 17 **FOURTH CAUSE OF ACTION**

18 **Untrue and Misleading Advertising in Violation of California Bus. & Prof. Code**

19 **§17500, *et seq.***

20 **(California Subclass Only)**

21  
 22 76. Plaintiff restates and incorporate herein by reference the preceding  
 23 paragraphs as if fully set forth herein. This cause of action applies only to the  
 24 proposed California Subclass.

25 77. California Business & Professions Code § 17500 prohibits various  
 26 deceptive practices in connection with the dissemination, in any manner, of  
 27 representations which are likely to induce or which are made for the purpose of  
 28

1 inducing, directly or indirectly, customers to transact for services, including the  
2 services provided by Defendants that are at issue herein.

3 78. As detailed above, Defendants' advertisements for their gambling sites  
4 were materially false and concealed material facts. Defendants' material  
5 misrepresentations and omissions alleged herein were intended to, and did induce the  
6 consuming public to transact for Defendants' services thinking that they were fair  
7 games of skill. These misrepresentations and omissions were in violation of  
8 Business & Professions Code §17500.

9 79. As a direct result of the foregoing, Plaintiffs and the other members of  
10 the proposed California Subclass, and the general public, are entitled to injunctive,  
11 restitutionary, and consequential damages such as taxes, fees, etc., as previously  
12 alleged in the Third Cause of Action.

## 13 **FIFTH CAUSE OF ACTION**

### 14 **Negligence**

15 80. Plaintiff restates and incorporate herein by reference the preceding  
16 paragraphs as if fully set forth herein.

17 81. Defendants owed duties to Plaintiff and the proposed class as users and  
18 paying customers of their site to use reasonable care to provide true, reliable and safe  
19 information and fair contests, and to keep information that might compromise the  
20 fairness of their contests secure.

21 82. Defendants breached their duties to Plaintiff and the proposed class by  
22 failing to prevent their employees with inside information and data from competing  
23 against Plaintiff and the proposed class.





1 over Plaintiff and the class members, thereby diminishing Plaintiff and the class'  
2 ability to use skill to win.

3 89. These representations were false when made. As specified above,  
4 Defendants were aware that their employees were able to, and in fact did, gain unfair  
5 advantage in competition over all other players by virtue of their access to material  
6 non-public information.

7 90. These representations were material in that Plaintiff and the proposed  
8 class would not have deposited money or engaged in any activity on Defendants'  
9 websites had they known that they were competing with contestants with material  
10 non-public information.

11 91. Defendants were aware that Plaintiff and the proposed class paid to play  
12 fantasy sports on their websites because of assurances that the games were fair and  
13 based on skill.

14 92. As detailed above, Plaintiff and the proposed class acted in reliance on  
15 the false, material representations and omissions made by Defendants, which caused  
16 them injury. As a result of Defendants' fraudulent representations and fraudulent  
17 omissions, Plaintiff and the proposed class were induced to enter into contracts that  
18 they otherwise would not have entered into -- to their financial detriment.  
19

## 20 **SEVENTH CAUSE OF ACTION**

### 21 **Negligent Misrepresentation**

22  
23  
24 93. Plaintiff restates and incorporate herein by reference the preceding  
25 paragraphs as if fully set forth herein.

26 94. Defendants owed duties to Plaintiff and the proposed class as users and  
27 paying customers of their site to use reasonable care to provide true, reliable and safe  
28 information and fair contests.

1           95. In the course of their business, profession and employment, Defendants  
2 and their agents, representatives and employees repeatedly represented to Plaintiff,  
3 to members of the proposed Class, and to the public, that their contests were fair  
4 games of skill.

5           96. Defendants also did not disclose that employees, agents, owners and/or  
6 others with non-public information and access to entries submitted by Plaintiff and  
7 the class members, would use this information to compete with and gain an unfair  
8 advantage over Plaintiff and the class members, thereby diminishing Plaintiff and the  
9 class' ability to use skill to win.

10           97. Regardless of whether Defendants believed the representations, the  
11 representations were false, and Defendants had no reasonable grounds for believing  
12 the representations were true when they made them.

13           98. Regardless of whether Defendants were aware that their employees,  
14 agents, owners and/or others with non-public information and access to entries  
15 submitted by Plaintiff and the class members were using this information to compete  
16 with and gain an unfair advantage over Plaintiff and the class members, Defendants  
17 should have known this, and were negligent in not discovering it and communicating  
18 that information to Plaintiffs and other members of the proposed Class.

19           99. Plaintiff and the proposed class justifiably relied upon the information  
20 supplied by Defendants, and, as a result, engaged in business with Defendants and  
21 lost money.

22           100. As a direct and proximate result of Defendants' negligence, Plaintiff and  
23 the proposed class were damaged in an amount to be proven at trial.  
24

25 //

26 //

27 //

**EIGHTH CAUSE OF ACTION**

**Civil Conspiracy**

101. Plaintiff restates and incorporates herein by reference the preceding paragraphs as if fully set forth herein.

102. As detailed above, Defendants engaged in a corrupt or unlawful combination and/or agreement with each other to do an unlawful act and continued to act in concert after the act was discovered.

103. Specifically, by affirmatively agreeing to allow competitors' employees to play fantasy sports on their own sites and concealing this agreement from Plaintiff and the proposed class, Defendants committed negligence and/or fraud. This was done pursuant to or in furtherance of the conspiracy to allow their employees the opportunity to make money, to continue to attract new players to their websites and otherwise, to generate revenues from their unlawful activities.

104. Defendants gave each other assistance and encouragement in accomplishing the tortious result of having their employees compete with and beat players on other daily fantasy sports sites.

105. As a direct and proximate result of Defendants' concerted actions, Defendants are liable to Plaintiff and the members of the proposed class.

**NINTH CAUSE OF ACTION**

**Unjust Enrichment**

106. Plaintiff restates and incorporate herein by reference the preceding paragraphs as if fully set forth herein.

107. Plaintiff and the members of the proposed class conferred a benefit on Defendants by depositing money and playing in contests on their websites.

108. Defendants have been unjustly enriched in retaining revenues derived from these deposits and contest entries. Retention of revenues under these circumstances is unjust and inequitable because Defendants misrepresented facts concerning the fairness of contests available on their sites.

109. Plaintiff and members of the proposed class were injured as a direct and proximate result of Defendants' misrepresentations and omissions because they paid to play fantasy sports on Defendants' websites, which they would not have done had they known the true facts. Because Defendants' retention of the non-gratuitous benefit conferred on them by Plaintiff and the members of the proposed classes is unjust and inequitable, Defendants must pay restitution to Plaintiff and the members of the proposed class for their unjust enrichment, as ordered by the Court.

### **TENTH CAUSE OF ACTION**

#### **Violations of the California Consumer Legal Remedies Act**

#### **California Civil Code §1750, *et seq.***

#### **(California Subclass Only)**

110. Plaintiff restates and incorporate herein by reference the preceding paragraphs as if fully set forth herein. This cause of action applies only to the proposed California Subclass.

111. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civil Code §1750, *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

112. The gaming websites and the opportunities to play against other players in fantasy sports games that were provided by Defendants are "services" as defined in California Civil Code §1761(b), and were provided to the public (including

1 Plaintiff and the members of the Proposed California Subclass) through  
2 “transactions” as defined in California Civil Code §1761(e).

3 113. Plaintiff and other members of the proposed California Subclass  
4 purchased their access to Defendants’ sites, and placed money at stake in what they  
5 thought was a fair game of skill, for their own personal use, and are “consumers” as  
6 defined in California Civil Code §1761(d).

7 114. As detailed above, Defendants’ advertisements for their gambling sites  
8 were materially false and concealed material facts. Defendants misrepresented that  
9 their gaming services were fair contests of skill, and concealed the fact that  
10 Defendants’ employees were allowed to compete while in possession of insider  
11 information that gave them a substantial advantage over other, lay consumers.

12 115. In purchasing and using Defendants’ gaming services, Plaintiff and  
13 other members of the proposed California Subclass were deceived by Defendants’  
14 misrepresentations and concealments.

15 116. Defendants’ conduct, as described herein, was and is in violation of the  
16 CLRA. Defendants’ conduct violates at least §§1770(a)(5) and (a)(7) of the CLRA,  
17 prohibiting representing that services have .characteristics, uses, or benefits that they  
18 do not, or that services are of a particular standard or quality if they are of another.

19 117. Plaintiff and other members of the proposed California Subclass have  
20 suffered injury in fact and actual damages resulting from Defendants’ material  
21 omissions and misrepresentations because they paid a premium price to partake of  
22 Defendants’ services, and because they lost money in unfair contests in which  
23 employees with inside information also participated.

24 118. Defendants knew, should have known, or were reckless in not knowing  
25 that their employees were taking advantage of insider information in the manner  
26 described above. Defendants further knew, should have known, or were reckless in  
27 not knowing that their contests were unfair.  
28

119. The facts concealed and omitted by Defendants to Plaintiff and other members of the proposed California Subclass were and are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase access to or participate in Defendants' gaming services. Had Plaintiff and other members of the proposed California Subclass known the truth, they would not have purchased access to, risked money through, or participated in Defendants' online gaming services, or would not have paid the prices they paid.

120. Plaintiff and the proposed class are entitled to equitable relief and a declaration that Defendants' conduct violates the Consumer Legal Remedies Act.

121. Plaintiff disclaims any request for monetary relief (including punitive damages) under the Consumer Legal Remedies Act at this time, but reserves the right to seek such relief after providing Defendants with the notice required by the Act.

### **PRAYER FOR RELIEF**

Plaintiff, individually and on behalf of all others similarly situated, requests the Court to enter judgment against Defendants, as follows:

- a. Certifying the Class and the Subclass, as requested herein, certifying Plaintiff as the representative of the Class, and appointing Plaintiff's counsel as counsel for the Class;
- b. For damages suffered by Plaintiff and the proposed classes, including treble damages;
- c. For restitution to Plaintiff and the proposed classes of all monies wrongfully obtained by Defendants;
- d. For injunctive relief requiring Defendants to cease and desist from engaging in the unlawful, unfair, and/or deceptive practices alleged in the Complaint;
- e. An order granting injunctive relief as permitted by law or equity, enjoining Defendants from continuing the unlawful practices as set forth herein, and injunctive relief to remedy Defendants' past conduct;

- 1 f. For Plaintiff's reasonable attorneys' fees, as permitted by law;  
2 g. For Plaintiff's costs incurred;  
3 h. For pre-judgment and post-judgment interest at the maximum  
4 allowable rate on any amounts awarded; and  
5 i. For such other and further relief that this Court deems just and  
6 proper under equity or law, including the award of punitive damages.

7 DATED: November 12, 2015

8  
9 By: /s/ Michael I. Katz  
10 Mark P. Robinson, Jr.  
11 Kevin F. Calcagnie  
12 Daniel S. Robinson  
13 **ROBINSON CALCAGNIE ROBINSON**  
14 **SHAPIRO DAVIS, INC.**  
15 19 Corporate Plaza Drive  
16 Newport Beach, California 92660  
17 Telephone: (949) 720-1288  
18 Facsimile: (949) 720-1292

19 Alan Greenberg  
20 Wayne Gross  
21 Michael Katz  
22 **GREENBERG GROSS LLP**  
23 650 Town Center Drive, Suite 1750  
24 Costa Mesa, California 92626  
25 Telephone: (949) 380-2800  
26 Facsimile: (949) 383-2801

27 *Attorneys for Plaintiff Daniel Hale and the*  
28 *Proposed Classes*



**JURY DEMAND**

Plaintiff, individually and on behalf of all class members, demands a trial by jury on all claims so triable as a matter of right.

DATED: November 12, 2015

By: /s/ Michael I. Katz  
Mark P. Robinson, Jr.  
Kevin F. Calcagnie  
Daniel S. Robinson  
**ROBINSON CALCAGNIE ROBINSON  
SHAPIRO DAVIS, INC.**  
19 Corporate Plaza Drive  
Newport Beach, California 92660  
Telephone: (949) 720-1288  
Facsimile: (949) 720-1292

Alan Greenberg  
Wayne Gross  
Michael Katz  
**GREENBERG GROSS LLP**  
650 Town Center Drive, Suite 1750  
Costa Mesa, California 92626  
Telephone: (949) 380-2800  
Facsimile: (949) 383-2801

*Attorneys for Plaintiff Daniel Hale and the  
Proposed Classes*